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## REMARKS

In this application, claims 34-38 have been previously allowed, and the present Office Action maintained prior restriction and election requirements and made rejections of other claims. Specifically, claims 12-14, 17, and 39-44 have been withdrawn from consideration, and claims 1-11, 15-16, and 18-33 have been rejected. In light of the cancellations noted above and the remarks below, Examiner Pellegrino is respectfully requested to allow this application.

Applicants' attorney thanks Examiner Pellegrino for a more complete explanation of his basis for restriction in this case. While that basis and the allegations that go along with it are not conceded, in order to move this case to allowance the withdrawn claims 12-14, 17 and 39-44 have been cancelled without prejudice to reconsideration in this or a continuing application. It is noted that the claims in this case are intended to have the full scope to which their language entitles them, including all appropriate embodiments described and/or shown in the application.

Regarding rejections over the previously cited Amrein, Hoffman and Ramsey references, it is maintained that those references do not anticipate the rejected claims and/or render them obvious. Nevertheless, in order to move this case to allowance the rejected claims 1-11, 15-16, 18, and 25-28 have been cancelled without prejudice to reconsideration in this or a continuing application. No limitation of the scope of other claims is intended through this cancellation.

Claims 19-24 and 29-33 were rejected as obvious over a combination of the previously-cited Amrein and Taylor references. In the outstanding Office Action, Examiner Pellegrino took note of the remarks in a prior response intended to disqualify the Taylor reference, but did not accept them because he considered a declaration under 37 C.F.R. 1.130 to be necessary.

Applicants' attorney thanks the Examiner for that explanation, and for his time in discussing this particular point on January 23, 2007. In that discussion, Applicants' attorney

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noted that the remarks in the prior Office Action response relied on MPEP 706.02(1)(2), which provides under section II that a statement clearly to the effect that an application and a reference were commonly owned at the time the invention was made would be sufficient to overcome the commonly-owned reference. Under that provision, an applicant may, submit assignment records or other evidence, but is not required to do so. The Examiner relied on MPEP 718 (which cites to 37 C.F.R. 1.130) in the Office Action, but that section concerns situations in which application claims are not patentably distinct from a reference's claims. In this case, however, no allegation or showing has been made that claims 19-24 and 29-33 of the present application are not patentably distinct from the reference's claims. Accordingly, it appears that the procedure of MPEP 718 and a declaration under 37 C.F.R. 1.130 should not be required for this application.

Applicants' attorney understood from Examiner Pellegrino that he would want to review this case in light of that point, but that the explanation provided by Applicants' attorney was persuasive. Accordingly, it is believed that the procedure under MPEP 706.02(1)(2) will be accepted by the Examiner, with the result that the Taylor reference will be withdrawn. A new statement conforming to that procedure is found at the end of this response. Since the Examiner provisionally indicated that he would follow the procedure under MPEP 706.02(1)(2), no declaration under 37 C.F.R. 1.130 has been provided. Should it be determined that such a declaration is needed, Applicants respectfully request issuance of a new Office Action explaining that position and providing an opportunity to submit the declaration and/or further argument.

In light of the remarks above and the statement below, the Examiner is respectfully requested to withdraw the Taylor reference. The subject matter of pending claims 19-24 and 29-33, which were rejected solely as obvious over the Amrein reference in view of the secondary Taylor reference, should thus be allowed. Those claims have been rewritten as new claims 79-

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89. Independent claim 79 corresponds to prior claim 29, and new claims 80-83 correspond respectively to prior claims 30-33. Independent claim 84 corresponds to prior claim 21, and new claims 85-89 correspond respectively to prior claims 19-20 and 22-24. It is believed that these new claims 79-89 present no new examination issues, and should be allowed with the removal of the Taylor reference from consideration.

New claims 45-78 have been offered, and their entry is respectfully requested because they present no new examination issues. These new claims 45-78 depend directly or indirectly from one of allowed independent claims 34 and 36, and most include features previously present in other claims of this application. Claims 55-61 and 72-78 are supported by at least paragraphs 0020, 0026 and/or 0027 and associated drawings. These new claims do not add any new matter to this application, and they do not present any new examination issues insofar as they depend from allowed claims. Their entry and allowance is respectfully requested.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action but are simply provided to address the rejections made in the Office Action in the most expedient fashion. Applicant reserves the right to later contest positions taken in the Office Action that are not specifically addressed herein. Further, no limitation of the claims is intended by any of the remarks herein. The claims are intended to have the full scope to which their language entitles them, including equivalents.

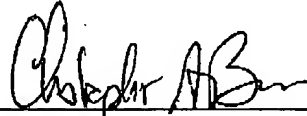
Statement Pursuant To MPEP 706.02(1)(2)

The present application and U.S. Patent No. 6,579,292 to Taylor were, at the time the invention was made, owned by or subject to an obligation of assignment to, the same person, i.e. SDGI Holdings, Inc., which has since been merged with and into Warsaw Orthopedic, Inc.

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Applicants again thank Examiner Pellegrino for his explanations concerning the pending claims, and entry of the new claims and allowance of this application is respectfully requested. The Examiner is invited to call the undersigned to discuss any further issues that may remain.

Respectfully submitted,



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